



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

TROY FAGG,

Plaintiff,

V.

THE UNITED STATES OF AMERICA,  
KEITH FIXEL, GEORGE FRAZIER,  
LYNETTE WILLIAMS, THOMAS  
NOYES, and SATINA PYRON,

Defendants.

CIVIL ACTION  
NO. 1:14-CV-3539-CC

**MEMORANDUM IN SUPPORT OF DEFENDANTS THE UNITED STATES OF AMERICA, KEITH FIXEL, GEORGE FRAZIER, LYNETTE WILLIAMS, THOMAS NOYES, AND SATINA PYRON’S MOTION TO STRIKE PLAINTIFF’S SURREPLY**

Defendants the United States of America (“United States”), Keith Fixel, George Frazier, Lynette Williams, Thomas Noyes, and Satina Pyron (collectively, “Defendants”) timely filed their Motion to Dismiss the First Amended Complaint (Dkt. 5) on January 20, 2015. Plaintiff filed a Response in Opposition (Dkt. 9) on February 9, 2015. Defendants timely filed their Reply (Dkt. 10) on February 12, 2015. Pursuant to F.R.C.P. 26 and Local Rule 7.1, this completed the briefing on this motion and it became ripe for submission to the Court.

Without leave from the Court and under no authority in the Federal Rules of Civil Procedure or Local Rules, Plaintiff filed his Surreply (Dkt. 11) on February 17, 2015. This pleading should be struck. The briefing on Defendants' Motion is complete, Plaintiff had an opportunity to fully brief his response as authorized by the rules and has done so, and there is no justification for any further back-and-forth. "Neither the Federal Rules of Civil Procedure nor this Court's Local Rules authorize the filing of surreplies." *Fedrick v. Mercedes-Benz USA, LLC*, 366 F.Supp.2d 1190, 1197 (N.D.Ga.2005) (citing *Byrom v. Delta Family Care—Disability & Survivorship Plan*, 343 F.Supp.2d 1163, 1188 (N.D.Ga.2004)). "To allow such surreplies as a regular practice would put the court in the position of refereeing an endless volley of briefs." *Garrison v. N.E. Ga. Med. Ctr., Inc.*, 66 F.Supp.2d 1336, 1340 (N.D.Ga.1999). Rather, surreplies typically will be permitted only in unusual circumstances, such as where a movant raises new arguments or facts in a reply brief, or where a party wishes to inform the Court of a new decision or rule implicating the motion under review. *Cf., e.g., Fedrick*, 366 F.Supp.2d at 1197 (stating "valid reason for ... additional briefing exists ... where the movant raises new arguments in its reply brief"). Plaintiff cannot demonstrate that a particular argument or representation made by Defendants in their reply warrants a surreply by them, and Plaintiff's Surreply should be struck.

Respectfully submitted,

JOHN HORN  
ACTING UNITED STATES ATTORNEY

LORI M. BERANEK  
Assistant U.S. Attorney

/s/ GABRIEL A. MENDEL

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**CERTIFICATE OF COMPLIANCE**

I certify that the documents to which this certificate is attached have been prepared with one of the font and point selections approved by the Court in LR 5.1B for documents prepared by computer.

*s/ Gabriel A. Mendel*

Gabriel A. Mendel  
Assistant U.S. Attorney

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**CERTIFICATE OF SERVICE**

I certify that I electronically filed the within and foregoing with the Clerk of Court using the CM/ECF system.

This 17th day of February, 2015.

s/ Gabriel A. Mendel

Gabriel A. Mendel  
Assistant U.S. Attorney